UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1998/263
24 March 1998
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 24 MARCH 1998 FROM THE PERMANENT REPRESENTATIVE OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

1. I refer to the letter dated 16 March 1998 addressed to you by the Permanent Representative of the United Kingdom and the Acting Permanent Representative of the United States (S/1998/239) in response to the letters of 2 and 4 March 1998 addressed to you by the Permanent Representative of the Libyan Arab Jamahiriya (S/1998/179 and S/1998/192) concerning the two judgments delivered by the International Court of Justice on 27 February 1998 in the cases brought by the Libyan Arab Jamahiriya against the United Kingdom and the United States.

Since the communication in question distorts the letter and spirit of the letters to which it refers, ignores the facts established by the Court in the judgments issued by it and seeks to pre-empt the procedures laid down in the Rules of Court, I feel obliged to make the observations set forth hereunder.

2. The letter ignores the fact that, by paragraph [53](1)(a) of the judgment[s], in which it rejects the objection to jurisdiction, the Court determines that there is a dispute between the parties concerning the interpretation and application of the 1971 Montreal Convention.

The letter further ignores the fact that, in the reasons for its judgment[s], the Court finds that the Libyan applications were filed before the adoption of Security Council resolutions 784 (1992) and 883 (1993) and that the case is therefore admissible (para. [53](1)(b) [i.e. 53(2)(b)]) and that the two Security Council resolutions in question do not, in the circumstances of the case, have a preliminary character (para. [53](3) of the judgment[s]). The Court has thus yet to rule on the effect of the aforesaid resolutions on the Libyan applications.

3. When it is determined that there is indeed a dispute with respect to which the Court has jurisdiction, then the dispute is a legal one and it is incumbent on the Security Council to request the parties to submit it to the judicial authorities (arbitration or the courts). Libya submitted the legal dispute to the Court, and the Court responded positively to its view of the matter in accordance with the provisions of the Charter.

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4. A party to a dispute that is submitted to the Court, that is found to be admissible by it and with respect to which it has jurisdiction may not resort to another way of resolving the dispute, may not pre-empt the judgment of the Court with regard to its subject-matter and may not discuss matters relating thereto outside the courtroom, as stipulated in the Rules of Court. Accordingly, the statements made in paragraph 5 of document S/1998/239 represent a failure to meet requirements and a departure from judicial procedure and are consequently in violation of the Rules of Court, the Statute of the Court and the Charter of the United Nations.

5. The text of paragraph 42 of the Order of 14 April 1992 [in the case against the United States of America] does not indicate that the Court has reached a definitive opinion of the matter, since it characterizes the conclusions reached by the Court as "provisional" and "prima facie" (emphasis added). Moreover, paragraph 43 of the same Order states that the Court has not at this stage determined the legal effect of Security Council resolution 748 (1992). In determining that the matter is not of a preliminary character, it took into account, as it stated, the circumstances surrounding the Libyan applications and the date they were filed with the Court (i.e. before the adoption of the two resolutions in question).

6. The letter does not make it clear that the only relevant resolution that was adopted by the Security Council before the Libyan applications were filed with the Court is resolution 731 (1992), in which the Council urges Libya to respond to the requests made by the United Kingdom and the United States but mentions no obligations that conflict with Libya's rights under the Convention. The other two resolutions, those providing for sanctions, were adopted after the applications were filed with the Court. The Court has found that those applications are admissible and that it has jurisdiction to consider them, and they remain before the Court for its consideration.

7. The statement made in paragraph 7 of the letter in question is untrue, and the decision of the Court is not entirely procedural because it implies an order relating to resolutions 748 (1992) and 883 (1993). The statement made in paragraph 8 of the letter is of no importance because of its failure to meet requirements and because it departs from the two cases submitted to the Court and the two judgments delivered by it.

8. Resolutions adopted by any body whatever that concern an issue that is before the courts, and is therefore subject to a determination that it does not affect the rights of States, should not be implemented when they relate to economic sanctions that affect the lives of peoples and individuals.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Abuzed Omar DORDA
Permanent Representative